



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

January 25, 2008

State of Maine Performance & Training Facility (Conference Room, Lower Level)
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

MINUTES

9:30 AM

☒ Present: Eckert, Stevenson, Qualey, Simonds, Jemison and Walton.

1. Introductions of Board and Staff

☒ Jennings first introduced Brian Barrett, who had recently been hired to fill Connors' previous position. Then the Board, staff and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the December 14, 2007, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

☒ Jemison/Stevenson: Moved and seconded approval of the minutes.

In Favor: Unanimous

3. Request from Training Development Corporation for Grant to Help Support a Worker Protection Safety Training Program for Summer 2008

Since 1995, the Board has supported a Migrant and Seasonal Farmworker Safety Education Program conducted by the Training and Development Corporation (TDC) of Bucksport. During this past year, 528 individuals received training under this project. TDC is planning to again work in partnership with the Maine Migrant Health Program to support one, and possibly two or more health and safety outreach workers during the 2008 agricultural season. Funding to support this effort is being requested and the staff will point out that the total cost will be similar to the past year and that amount has been budgeted in the Board's FY '08 work plan.

Presentation By: Christopher Huh
TDC Plan Manager, Farmworker Jobs Program

Barbara Ginley
Executive Director, Maine Migrant Health Program

Action Needed: Discussion and determination if the members wish to fund this grant request

- ☒ Jennings stated that the relationship with TDC and the Maine Migrant Health Program (MMHP) dated back to 1995. The Board's staff views the efforts of the TDC and MMHP as providing an invaluable service for the Hispanic migrant population. Jennings introduced Barbara Ginley, Executive Director of the Maine Migrant Health Program, who explained that this year's request can only guarantee one bilingual health and safety trainer, because AmeriCorps funding is not available. Ginley further stated that both TDC and the MMHP plan to investigate other possible funding mechanisms with a goal of hiring an additional health and safety educator. Pesticide safety training is focused in the apple, blueberry and broccoli industries. Chris Huh of TDC reiterated that federal funding has been scarce. TDC is a member of the Association of Farm Worker Opportunity Programs, which historically administered an AmeriCorps grant. Board members briefly discussed other possible sources of funding.

Jemison/Simonds: Moved and seconded approval of the grant request.

In Favor: Unanimous

4. Adoption of Amendments to Chapters 26, 29 and 41

A public hearing was held on November 16, 2007, on a series of amendments to four different rule chapters. Forty-four people testified at the public hearing and 124 written comments were received prior to the November 30, 2007, deadline. At its December 14, 2007, meeting the Board reviewed the comments and followed with extensive discussion. Members decided not to adopt the proposed Chapter 10, to leave the proposed Chapter 26 unchanged, to make two changes to Chapter 29, and numerous changes to Chapter 41. The Board then directed the staff to make the changes and bring the three rules back for adoption at the next meeting on January 25, 2008.

Presentation By: Henry Jennings
Director

Action Needed: Adoption of the Rule, Basis Statement and Response to Comments for each of the three rules

- ☒ Jennings alerted Board members to revised basis statements for all three chapters in their Board packets. A paragraph was added to the end of each basis statement indicating that a financial impact statement had been prepared and is available for review. He reminded members that it is necessary for them to adopt an amended rule, a basis statement and a response to comments for each amendment.

The Board first considered the proposed amendments to Chapter 26. Jennings reminded members that the significant change was to exempt crack and crevice treatments from the advance notice requirements. Minor changes include a statement specifying that signs need to remain posted for 48 hours following the application, and another statement clarifying that the person posting the signs is responsible for compliance with that requirement. Finally, Jennings reminded Board members that the Chapter 26 amendment is considered major substantive rulemaking and, as such, it must be approved by the Legislature before it becomes effective.

Stevenson/Qualey: Moved and seconded that the Board adopt the proposed amendment to Chapter 26, the basis statements as amended, the statement of impact on small businesses, and the response to comments.

In Favor: Unanimous

Next, the Board considered the proposed amendments to Chapter 29. Jennings pointed out the new Section 5 is considered a routine technical amendment, while the new Section 6 is considered major substantive, requiring legislative review. Two changes were made to Section 6: an exemption was added for control of stinging insects and an exemption was added for wetlands associated with man-made cranberry bogs. No comments were received relative to Section 5, and no changes were made to the original proposal.

Board members briefly discussed a key term used in the proposed Section 6: “broadcast applications.” There was recognition that a need may arise to define broadcast applications at some point, but consensus was reached to move forward with adopting the amendment and then reevaluate the need for a definition later.

Simonds/Jemison: Moved and seconded adoption of the proposed amendments, the basis statement as amended, the statement of impact on small businesses and the response to comments.

In Favor: Unanimous

Last, the Board considered the proposed amendments to Chapter 41. The proposed amendment would add a new Section 5 regulating the distribution and use of Bt corn. This proposed amendment received far more public comment than the other chapters combined. Jennings reminded Board members that minor revisions had been made from the original proposal, specifically Sections 5 (E) (I) (c) and (d), which require the grower to plant the refuge as a buffer to other non-Bt corn in very specific circumstances, and encourages growers to utilize best management practices.

A discussion ensued on whether growers would be allowed to use alternative techniques—other than using the refuge as a buffer—to protect neighboring non-Bt-corn crops. Jemison explained that the training seminar mentioned a number of strategies to prevent pollen outcrossing. Consensus was reached to add language allowing neighboring farmers to reach their own agreement on the most appropriate strategy to employ. The paragraph was also reorganized to break up a lengthy sentence.

Simonds also commented that the cost estimate in the statement of impact on small businesses might be interpreted as trivializing the costs to farmers. Consensus was reached to replace the cost estimate with a statement indicating costs should be minimal.

Qualey/Stevenson: Moved and seconded adoption of the proposed rule as amended, the basis statement, the statement of impact on small businesses and the response to comments.

In Favor: Unanimous

5. Review of Comments Received and Continuing Discussion on Issues Relating to Aerial Spraying and Spray Drift

The Board held a Public Information Gathering Meeting on aerial spraying and spray drift at its December 14, 2007, meeting. Six people commented at the meeting and five written comments were received. The Board will now review the written comments and a staff memo, continue discussion and decide how to proceed with this issue.

Presentation By: Henry Jennings
Director

Action Needed To determine what steps to take next

- ☒ Jennings led the discussion by going through a series of comments on the issue that was included in the Board's meeting folder. He first suggested that the Board focus only on aerial spraying at this time, even though policy changes could result in increased use of airblast equipment. Jennings reasoned that the issue is already extremely broad and complex and that focusing on aerial spraying would make progress more manageable. If airblast spraying then becomes a problem, the Board can address it separately. Simonds pointed out that additional burdens for aerial spraying may create a shift toward other application approaches, but he agreed that the best way to make progress on the aerial issue is to divide it into manageable pieces.

Jennings also recommended the Board move forward with the most obvious area for change in current policy: notification and procedures to ensure the correct site is sprayed. These areas are more easily addressed through relatively simple rule changes.

Jennings went on to comment that the sensitive area provisions in the current drift rule, together with the overall level of individual site planning were lacking and ineffective for aerial agricultural spraying. This is especially evident when incidents occur. He compared this to forest herbicide work in which the level of planning and oversight is far greater.

Simonds commented that operating a spray aircraft is extremely expensive and applicators need to move quickly. Eckert emphasized the need for improved communication between growers, applicators and neighbors. Walton stated that the industry is going to need to take more responsibility or this tool may be lost. Availability of aerial spraying may become more important as the climate warms and pest ranges shift further north.

Next, Jennings provided comments on a number of ideas brought forward by the stakeholders committee. He stated that buffer zones are a difficult issue: they are often either too large to be practical, or too small to be effective. He suggested that the Board might establish a minimum “upwind” buffer for aerial spraying, as residents object to aircraft trying to spray too close to their homes, regardless of the wind direction. Moreover, aerial applicators would prefer to not be asked to spray too close to homes. Downwind buffers may be more appropriate to address through best management practices. Jennings noted that North Carolina has a 300-foot “zero residue” zone surrounding certain occupied buildings. Any residue detected in that area is a violation.

Jennings mentioned that a number of states have adopted a standard of harm. Under this approach, whenever there is evidence that a neighbor has been harmed by pesticide drift and residues are detected, it is a violation. While harm is often a subjective standard, state officials claim the approach has proved to be an effective deterrent.

Best Management Practices (BMPs) were discussed next. While they are generally viewed by regulators as being voluntary measures, they are still useful for promoting practices that are difficult to commit to rules. Board sentiment was to wait to see what changes are placed in the rules before working on BMPs.

The Board also discussed incidents that occur while spraying next to public roads. Jennings noted the prevalence of such incidents suggests the current regulatory structure isn’t particularly effective. Connors commented that roads really are sensitive areas when people are using them.

Finally, Jennings commented that the 20% residue standard did not appear to be effective in preventing incidents. He also noted that he was not aware of any other governmental entity that had adopted a similar standard. Eckert agreed it was time to get rid of the 20% standard.

Board members discussed the problem of droplet size. Accuflo nozzles can dramatically reduce the occurrence of the very fine droplets, but are thought to be too coarse to be efficacious against many insects and fungi. Simonds asserted that exposure to people is driving the issue and should be a focus. He suggested that notification and spraying the wrong site are the most easily solvable components and asked the staff to develop concepts to address these issues for the next meeting. Some ideas could be incorporated into rules and others into BMPs. Consensus was reached to proceed as suggested.

6. Consideration of Staff Negotiated Consent Agreement with Sterling Insect-Lawn Control, Inc., of Gorham

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the failure to notify an individual listed on the 2007 Pesticide Notification Registry who was within 250 feet of an application.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- ☒ Connors explained that this case involved a company that failed to notify someone on the notification registry due to a data entry error on the part of the company. Simonds noted the registry is relatively small.

Jemison/Simonds: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Mainely Grass, Inc., of York

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved an application made to the wrong property without the owner's knowledge or permission.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- ☒ Connors reported that this was another incident involving a lawn care application to the wrong site. He went on to explain that the company had a stringent policy in place designed to prevent such incidents, but the applicator failed to observe the policy in this case. Connors further reported that the incident had been self-reported by the company, and both of these circumstances had figured prominently in the staff penalty proposal. Board members supported the notion that the company had taken reasonable steps to prevent this type of incident.

Simonds/Stevenson: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

8. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Henry Jennings
Director

Action Needed: Nominations and election of officers

- ☒ Jennings reminded Board members that they have been operating without a vice-chair since Lee Humphreys resigned. Members commented they were pleased with Eckert's work as chair and asked if she was willing to continue. She agreed to serve one more year. Eckert nominated Jemison as vice-chair, pointing out that he is able to attend most meetings. Consensus was reached for Eckert to continue as chair and Jemison to take over as vice-chair.
9. Other Old or New Business
- a. Board-approved training for Bt corn—G. Fish
- ☒ Fish circulated a copy of the training certificate he proposed to distribute to attendees of the Bt-corn seminar. The staff favored a wallet-size card, reasoning growers would need to bring it with them to purchase Bt corn. Fish reported that 39 people had attended the seminars and signed up for the certificates. Fish informed the Board that the staff had received inquiries about what programs the Board would approve in order to receive the Bt-corn training certificate. Jemison commented that he was a little uncomfortable with the idea of training being conducted by persons with a vested interest. Consensus was reached to approve only programs presented by governmental professionals without a vested interest, at least during the first year.
- b. 2007 Registration Update—W. Smith
- ☒ Smith commented that his memo contained one typo where it indicated that registrations were up 2.9% from 2005. It should have stated registrations were up 2.9% over 2006 levels. He also mentioned that CheckMite had received a full FIFRA Section 3 registration, negating the need to apply for Section 18 Emergency Exemptions in the future.
- c. Combining the Pesticides Registrar and Water Quality Specialist Positions—W. Smith
- ☒ Smith reminded members that the subject had been discussed at the annual planning session. The staff is looking for the Board's support on this proposal. There was some discussion about the administrative process for combining the positions. Jennings stated it shouldn't be too difficult, as long as the classification being sought isn't at a higher pay range. Smith recommended that the new staff person should have strong computer skills and support from the clerical staff. Consensus was reached to support the staff proposal.
- d. Central Maine Power Company's Transmission Right-of-Way Vegetation Management Plan for 2008—H. Jennings
- ☒ Jennings reported that the Vegetation Management Plan is provided as a courtesy to keep the Board informed about company practices.
- e. Report of Safer Chemicals Task Force—H. Jennings

- ☒ Jennings showed the report to Board members and pointed out that one of the key recommendations is to ensure adequate funding is provided to the Board to conduct compliance monitoring for IPM requirements and to track pesticide sales in the state.

f. Other ?

- ☒ Jennings informed the Board that he had received a request from Mike Legasse of Green Thumb Lawn Care for the Board to consider whether his system of informing his customers of the ongoing nature of the service over the last three years through a prominent announcement on all the company invoices and other mailings would suffice in lieu of the Board's Verifiable Authorization Policy.

Board members debated the request briefly and reviewed their policy. Consensus was reached that Legasse's system would need to be augmented with a telephone call.

Legasse had also questioned his company's responsibility to inform customers when his company acted as a subcontractor. After reviewing the definition of a spray contracting firm, consensus was reached that it is the responsibility of the person contracting with the property owner to ensure they are aware of the ongoing nature of the service.

10. Schedule and Location of Future Meetings

February 29, March 28 and May 2, 2008, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- ☒ No additional dates were set at this meeting.

11. Adjourn

- ☒ Simonds/Stevenson: Moved and seconded that the meeting adjourn at 12:57 p.m.

In Favor: Unanimous